

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:09-CR-216-FL-8

No. 5:15-CV-523-FL

ZIYAD YAGHI,)	
)	
Petitioner,)	
)	
v.)	<u>RESPONSE IN OPPOSITION</u>
)	<u>TO MOTION FOR ACCESS</u>
)	<u>TO SEALED DOCUMENTS</u>
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

Respondent, by and through the United States Attorney for the Eastern District of North Carolina, hereby supplements¹ its response in opposition to Petitioner's motion for access to sealed documents. [D.E. 2271]. Petitioner seeks access to over 60 sealed filings. [D.E. 2271 at 1 n.1].

As an initial matter, the Court should deny Petitioner's motion on mootness grounds. The motion (filed by counsel)² originally stated that access to those materials was necessary to help prepare Petitioner's objections to the memorandum and recommendation:

¹ The Court allowed Respondent to file this supplement in an order filed on February 8, 2018. [D.E. 2279].

² The motion for access to sealed materials was filed on January 5, 2017. [D.E. 2271]. Counsel moved to withdraw from Petitioner's case 17 days later. [D.E. 2272, 2273]. On February 8, 2018, the Court granted counsel's motion to withdraw. [D.E. 2279]. Petitioner has not filed anything with the Court indicating whether he wishes to adopt the motion filed by previous counsel.

While Petitioner's Counsel has obtained the case file from trial and appellate counsel, several motions, orders, and transcripts of pre-trial conferences were not included which may be germane to Petitioner's Objections to the Magistrate's Memorandum and Recommendation. Counsel seeks access to review these sealed documents to ensure substantive accuracy in its references to the actions of Petitioner's trial counsel pre-trial and to ease this court's review of the voluminous material by providing precise citations to the record on appeal.

[D.E. 2271 at 1]. On or about February 7, Petitioner filed his pro se objections to the magistrate judge's memorandum and recommendation. [D.E. 2278]. On February 8, the Court denied as moot Petitioner's pending motion for extension of time to file objections. [D.E. 2279]. In the same way, the instant motion was rendered moot once Petitioner filed his objections.

Additionally, as argued previously, Petitioner's motion does not distinguish among the various types of filings (sealed ex parte motions, sealed ex parte orders, classified filings and orders, and sealed filings). Petitioner's motion also does not explain why he should have access to each type of sealed or classified filing. Consequently, Petitioner has not demonstrated good cause for access to these filings.

In the alternative, Respondent objects specifically to allowing Petitioner access to any ex parte or classified filings to which he did not have access in his criminal prosecution. These documents appear to include, but are not limited to, Docket Entries

171, 172, 231, 236, 241, 244, 253, 258, 267, 289, 296, 297, 339, 369, 534, 605, 641, 642, 683, 691, 889, 917, 1289, 1453. Petitioner has not demonstrated any good cause to access such materials. Additionally, to the extent Petitioner seeks access to any materials covered by the Court's November 19, 2009, standing order (a redacted version of which appears at Docket Entry 174), Petitioner has not identified a procedure to comply with the Court's order.

For these reasons, Respondent respectfully asks that Petitioner's motion for access to sealed materials be denied.

Respectfully submitted, this 22nd day of February, 2018.

ROBERT J. HIGDON, JR.
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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has this the 22nd day of February, 2018, been served upon Petitioner at the below address via United States Mail:

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